IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

Bail Appl..No. 3597 of 2007()

CRIME NO. 93/2007 OF MANNAR POLICE STATION

PETITIONER/1ST ACCUSED IN CR.NO.93/2007

RAJAN, AGED 33 YEARS,
NILAVARASSERIL HOUSE, BUDANOOR,
CHENGANNUR, ALAPPUZHA DISTRICT.

BY ADV. SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS
SRI.AJITH MURALI

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 3597 of 2007

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Dated this the 25th day of June, 2007

O R D E R

Application for anticipatory bail. Petitioner is the first accused in a crime, where investigation is proceeding, inter alia, under Sections 326 and 307 I.P.C. Altogether there are nine accused persons and five injured persons.

2. The crux of the allegations is that the defacto complainant, who runs a licensed liquor shop, lodged a complaint against an unlicensed liquor outlet (a hotel) run by the petitioner. Raid was conducted. The petitioner's wife was arrested. On account of animosity, the accused persons led by the petitioner were alleged to have indulged in the culpable overt acts resulting in a grievous injury - fracture of the bones of the palm - by one of the victims. Investigation is in progress. The petitioner apprehends imminent arrest.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He raised a contention that no offence under Section 326 I.P.C. is at all revealed.

4. The learned Prosecutor submits that the records show that one of the victims had suffered a fracture. The learned Prosecutor

further points out that the petitioner is involved in many other crimes. In these circumstances there are no circumstances justifying the invocation of the discretion under Section 438 Cr.P.C.

5. I find merit in the opposition by the learned Prosecutor. The jurisdiction under Section 438 Cr.P.C. is to be invoked only sparingly and in exceptional cases, that too, only in aid of justice. I do not find any such circumstance available in this case, which can persuade this court to invoke such jurisdiction. This I am satisfied is a fit case where the petitioner must resort to the ordinary and regular procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek bail in the ordinary course.

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the Investigating Officer or the learned Magistrate and applies for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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